REMARKS

By the above amendment, Applicants have amended independent claims 38, 48, 58, and 68-70, and cancelled dependent claims 42, 43, 52, 53, 62, and 63, without prejudice or disclaimer of the subject matter thereof. Support for the amendments to the independent claims can be found in the cancelled dependent claims and in Applicants' specification, for example at page 38, lines 7-19. Applicants respectfully submit that no prohibited new matter has been added by this amendment.

Claims 38-41, 44-51, 54-62, and 64-70 are pending and under current examination. In the Final Office Action dated October 20, 2006, the Examiner: rejected claims 38-46, 48-56, 58-66, and 68-70 under 35 U.S.C. §102(e) as being unpatentable over U.S. Patent No. 6,988,138 to Alcorn et al., ("*Alcorn*"); and rejected claims 47, 57, and 67, under 35 U.S.C § 103(a) as being unpatentable over *Alcorn* in view of U.S. Patent Publication No. 2002/0032790 to Linderman ("*Linderman*").

Applicants respectfully traverse the rejections presented in the Final Office Action of October 20, 2006 in light of the current amendments and request allowance of the present application.[1]

[1] As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to certain assertions or requirements applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such in the future.

I. Rejection under 35 U.S.C. §102(e) of Claims 38-46, 48-56, 58-66, and 68-70

In view of the present amendment, Applicants respectfully traverse the rejection of claims 38-46, 48-56, 58-66, and 68-70 under 35 U.S.C. §102(e) as being anticipated by *Alcorn*.

As an initial matter, dependent claims 42, 43, 52, 53, 62, and 63 are cancelled and therefore the rejections to these claims are moot.

In order to properly establish anticipation under 35 U.S.C. § 102, the Federal Circuit has held that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). *See also* M.P.E.P. § 2131.

Alcorn does not disclose each and every element of Applicants' claims. For example, *Alcorn* does not disclose or teach the method of amended claim 38, including the steps of "transmitting a track command that tracks the user activity through the at least one selected course; and receiving a response to the track command, wherein the response comprises at least two of a percentage of material from the at least one selected course that has been viewed by the user, a test score associated with material

from the at least one selected course, and an amount of time spent viewing material in the at least one electronic course by the user."

Alcorn is directed to an online educational system that allows for the creation of online courses and implements the functionality for students to take the online courses (*Alcorn*, Abstract). The system allows the student to select a link (*Alcorn*, 1406, Figure 4) that "shows the grades that the student has been assessed in the course, such as for exams, quizzes, term papers, projects, assignments, etc." (*Alcorn*, column 16, lines 42-52).

The Examiner alleges that the ability to check particular course grades in *Alcorn* constitutes the claimed "transmitting a track command that tracks the user activity through the at least one selected course" (see Final Office Action, page 4, lines 13-18). Assuming, *arguendo*, that the Examiner's allegations are valid, *Alcorn* still does not teach "receiving a response to the track command, wherein the response comprises at least two of a percentage of material from the at least one selected course that has been viewed by the user, a test score associated with material from the at least one selected course, and an amount of time spent viewing material in the at least one electronic course by the user," as required by claim 38 (emphasis added). At most, the information available in *Alcorn* contains a test score, but contains neither "a percentage of material...viewed by the user" nor "an amount of time spent viewing material", as claimed.

In addition, while *Alcorn* arguably provides the instructor access to course statistics for the purpose of course analysis (see, e.g., *Alcorn*, column 23, lines 45-48),

none of these statistics constitute a "response [that] comprises at least two of a percentage of material from the at least one selected course that has been viewed by the user, a test score associated with material from the at least one selected course, and an amount of time spent viewing material in the at least one electronic course by the user," as required by claim 38 (emphasis added).

Accordingly, *Alcorn* fails to teach each and every element of independent claim 38 and, therefore, the rejection under 35 U.S.C. § 102 is improper. Independent claims 48, 58 and 68-70, although of different scope, contain language similar to that noted above with respect to claim 38. As a result, *Alcorn* fails to teach each and every element of amended claims 48, 58 and 68-70 and the rejection to those claims is improper.

Dependent claims 39-41, 44-46, 49-51, 54-56, 59-61, and 64-66 depend from claims 38, 48, or 58 and thus require all elements thereof. As set forth above, *Alcorn* fails to teach each and every element of claims 38, 48, and 58 above. Therefore the rejection of claims 39-41, 44-46, 49-51, 54-56, 59-61, and 64-66 is improper and should be withdrawn.

II. Rejection under 35 U.S.C. §103(a) of Claims 47, 57, 67

Applicants respectfully traverse the rejection of the claims under 35 U.S.C. § 103(a) based on *Alcorn* and *Linderman*. Claims 47, 57, and 67 depend from claims 38, 48, and 58 respectively and thus require all elements thereof. As set forth above, *Alcorn* fails to teach each and every element of claims 38, 48, and 58. *Linderman* does not cure the noted deficiencies of *Alcorn*. For example, *Linderman* also fails to teach or

suggest, "transmitting a track command that tracks the user activity through the at least one selected course; and receiving a response to the track command, wherein the response comprises at least two of a percentage of material from the at least one selected course that has been viewed by the user, a test score associated with material from the at least one selected course, and an amount of time spent viewing material in the at least one electronic course by the user," as recited in claim 38. Accordingly, *Alcorn* in combination with *Linderman* fail to establish a *prima facie* case of obviousness with respect to independent claim 38 and, similarly, claims 48 and 58, and moreover, with respect to dependent claims 47, 57, and 67.

CONCLUSION

In view of the foregoing, claims 38-41, 44-51, 54-62, and 64-70 are allowable over the prior art. Accordingly, reconsideration and withdrawal of the rejections by the Examiner is respectfully request and believed to be appropriate.

Applicants respectfully request that this amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 38-41, 44-51, 54-62, and 64-70 in condition for allowance. Applicants submit that the proposed amendments of claims 38-41, 44-51, 54-62, and 64-70 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this amendment should allow for immediate action by the Examiner.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: January 19, 2007

By: _____
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